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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

In re ERIC B., a Person Coming Under the
Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

ERIC B.,

Defendant and Appellant.

A153524, A154186

(Contra Costa County
Super. Ct. No. J17-01017)

Appellant, Eric B., challenges an electronic search condition in a dispositional order following his admission to several offenses, including grand theft, petty theft, resisting arrest, and battery on a police officer. Appellant also challenges the same condition reimposed in an order following his admission of a probation violation. We conclude appellant forfeited the issue by failing to object in the juvenile court and affirm.

I. FACTUAL AND PROCEDURAL BACKGROUND

This appeal arises out of two juvenile cases that have been consolidated on appeal for purposes of briefing, oral argument, and decision.

A. Case No. A153524

On September 23, 2016, the San Diego County District Attorney filed a juvenile wardship petition (Welf. & Inst. Code, § 602), alleging appellant committed misdemeanor grand theft person (Pen. Code, § 487, subd. (c)). According to the police department, appellant had approached a woman riding a trolley, taken her cell phone

from her hand by force and then taken her headphones. Appellant admitted the grand theft allegation.

On January 12, 2017, the San Diego County District Attorney filed a wardship petition alleging appellant resisted arrest (Pen. Code, § 148, subd. (a)(1)) and was a minor in possession of alcohol (Bus. & Prof. Code, § 25662, subd. (a)). When officers attempted to arrest appellant on December 11, 2016, he became “ ‘tense and rigid’ ” and attempted to pull away from them. Appellant admitted the resisting arrest charge and the possession of alcohol charge was dismissed.

On June 8, 2017, the San Diego County District Attorney filed a wardship petition alleging appellant committed petty theft. (Pen. Code, § 484.) On the afternoon of May 13, 2017, several students gathered near a trolley stop. At some point, the victim placed two cell phones on the ground and began fighting with another minor. While the victim was fighting, appellant stole both phones. Appellant admitted the allegation. The court subsequently transferred appellant’s case to Contra Costa County for disposition.

On December 4, 2017, the San Francisco County District Attorney filed a juvenile wardship petition alleging grand theft person (Pen. Code, § 487, subd. (c); count I), grand theft of personal property (*id.*, § 487, subd. (a); count II), battery on a peace officer (*id.*, § 243, subd. (b); count III), and resisting arrest (*id.*, § 148, subd. (a)(1); count IV). According to a Bay Area Rapid Transit (BART) police report, appellant “snatched” a cell phone from another person and ran down the BART platform to the escalators. Appellant was taken into custody. During processing at San Francisco Juvenile Hall, appellant kicked the cell door and slipped out of his handcuffs. When a sergeant entered appellant’s cell to talk to him, appellant spat on the sergeant. Defendant admitted grand theft person and battery on a peace officer, and the remaining charges were dismissed. The juvenile court transferred appellant’s case to Contra Costa County for disposition.

On January 16, 2018, the Contra Costa County Juvenile Court continued appellant as a ward of the court and placed him on probation with various conditions, including an electronic search condition. In imposing the electronic search condition, the court stated: “In light of the fact you have a tension [*sic*] for stealing electronic items, I am going to

order you must submit your cell phone or any other electronic device under your control to a search of any medium of communication reasonably likely to reveal whether you are complying with the terms of your probation, with or without a search warrant at any time of day or night. Such medium of communication includes text messages, voice messages, photographs, e-mail accounts, Snapchat and Instagram.” Defense counsel stated, “Your honor, I’m object to go [sic] the electronic search clause.” The basis of the objection was not specified and there was no further discussion of the objection. At the hearing, the court ordered appellant to serve nine months in Orin Allen Youth Rehabilitation Facility (OAYRF), plus a 180-day conditional aftercare period. Appellant timely appealed the order.

B. Case No. A154186

On February 5, 2018, the Contra Costa County District Attorney filed a notice of probation violation hearing (Welf. & Inst. Code, § 777), alleging appellant had violated probation by failing to obey rules of a county institution by refusing to participate in the OAYRF program. Appellant refused to follow directions, was disruptive, and used profanity in his classes at OAYRF. On March 20, 2018, the Contra Costa County District Attorney filed another notice of probation violation hearing. That petition alleged within a few hours of appellant returning to OAYRF from juvenile hall, he became defiant and disrespectful towards staff. At dinner, appellant attempted to intimidate an institutional officer by demanding and trying to take the officer’s ice cream. Later, he imitated the officer in a racially derogatory manner. Appellant also made statements about absconding from the facility and told the supervisor he wanted to refuse his program. A short time later, appellant demanded he receive hygiene products from the commissary during showers. Appellant was directed to sit in a specific location, but he refused. He did not follow staff instructions to remain seated, became “openly defiant,” and was handcuffed and transported to juvenile hall.

On April 2, 2018, appellant admitted violating probation. The juvenile court ordered appellant to serve 14 months in the county’s Youthful Offender Treatment

Program and ordered that prior orders of the court would remain in effect. Appellant timely appealed.

II. DISCUSSION

Appellant's sole claim on appeal is that the electronics search condition is unconstitutionally overbroad in violation of the First and Fourth Amendments to the United States Constitution. Because counsel failed to assert an overbreadth objection in the juvenile court and the objection does not present a facial constitutional challenge, we conclude the objection was forfeited.

Immediately after the juvenile court imposed the challenged condition at the January 16, 2018 disposition hearing, counsel for appellant responded, "Your Honor, I'm object to go [sic] the electronics search clause." Counsel did not specify a basis for the objection, and the juvenile court did not further consider or rule on the objection.

Constitutional challenges based on overbreadth or vagueness may be raised for the first time on appeal when they " 'present "pure questions of law that can be resolved without reference to the particular sentencing record developed in the trial court." ' " (*In re Sheena K.* (2007) 40 Cal.4th 875, 889.) "An alleged constitutional defect that is 'correctable only by examining factual findings in the record or remanding to the trial court for further findings' is not a facial constitutional challenge, and traditional forfeiture principles apply." (*In re I.V.* (2017) 11 Cal.App.5th 249, 261.)

Here, appellant does not argue his challenge is a facial constitutional challenge. On the contrary, his argument that the probation condition is not narrowly tailored to the juvenile court's stated purpose in imposing it depends on the specifics of the record developed below, including the circumstances of his offenses and his rehabilitative needs. Because his constitutional argument cannot be resolved without reference to the factual record as applied to him and he failed to object on overbreadth grounds below, he has forfeited the claim on appeal. (*People v. Smith* (2017) 8 Cal.App.5th 977, 987; see *People v. Ramirez* (2006) 39 Cal.4th 398, 472 [failure to press trial court for ruling on objection forfeits claim].)

In any event, even if counsel's objection were sufficient to preserve the issue for appeal, his challenge would fail on the merits¹ because the electronic search condition was reasonably tailored to the legitimate purpose of preventing appellant's future criminality and ensuring his compliance with probation conditions.² Appellant's underlying offenses involved multiple thefts of cell phones, and accordingly, imposition of a condition allowing search of his electronic devices to ensure he is complying with his probation, including by not stealing further cell phones, was appropriate.

Further, appellant's particular circumstances suggest he needed heightened supervision, justifying a broader search condition. In *In re J.E.* (2016) 1 Cal.App.5th 795, review granted October 12, 2016, S236628 (*J.E.*), another division of this court upheld an electronic search condition against an overbreadth challenge where the minor was chronically truant, had serious behavioral and education issues, a difficult family life, and a significant drug and alcohol problem. (*Id.* at p. 806.) Here, like the minor in *J.E.*, appellant "requires intensive supervision to ensure his compliance with his probation conditions." (*Id.* at p. 805.) Appellant was not before the juvenile court because of one isolated instance of criminal conduct. Among other things, he had petitions or probation violations from three counties, had stolen several cell phones, had committed battery on a police officer, resisted arrest, had violated the rules of his placements on multiple occasions, had trouble with authority figures, and used drugs. The juvenile court observed immediately before imposing probation conditions, that appellant "has a real demonstrated history and pattern of a complete inability to abide by rules and structure." As in *J.E.*, "[t]hese collective circumstances justify the juvenile court's imposition of a broad electronic search condition as a means of adequately supervising [appellant's] compliance with his probation conditions and protect[ing] the public, as well as [appellant], from [appellant's] future criminality. Moreover, given [appellant's] limited

¹ We also address appellant's challenge on the merits to foreclose a claim based on ineffective assistance of counsel for failure to raise a proper objection in the trial court.

² Indeed, appellant does not challenge the reasonableness of the probation condition under *People v. Lent* (1975) 15 Cal.3d 481.

reasonable expectation of privacy, the intrusion into [appellant's] right to privacy is outweighed by the state's interest in ensuring his rehabilitation.” (*Id.* at p. 806.) Also, unlike the condition in *J.E.* (*id.* at p. 800), the electronic search condition in this case was related to the underlying offenses because appellant's crimes involved stolen cell phones. As discussed above, this fact further supports a finding the condition was reasonably related to preventing criminality and furthering appellant's rehabilitation.

Finally, though appellant relies on *In re P.O.* (2016) 246 Cal.App.4th 288 in asserting his overbreadth claim, the search condition in this case is much narrower than the search condition in that case. There, the condition required P.O. to “ ‘[s]ubmit . . . electronics including passwords under [his] control to search’ ” at any time (*id.* at p. 292), but here the condition specifies the media to be searched includes text messages, voice messages, photographs, e-mail accounts, Snapchat, and Instagram. While the condition in *P.O.* allowed “review of all sorts of private information that is highly unlikely to shed any light on whether P.O. is complying with the other conditions of his probation, drug-related or otherwise” (*id.* at p. 298), here the condition is limited to media reasonably likely to reveal whether appellant is complying with the terms of his probation.

III. DISPOSITION

The judgment is affirmed.

Margulies, J.

We concur:

Humes, P. J.

Banke, J.

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In re Eric B.